



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 3/07/05.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
CHARLES THOMAS,)	
)	
Complainant,)	Charge No. 2002CA1300
)	ALS No. 12091
)	
AND)	
)	
JOLIET TOWNSHIP,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is before me for consideration of Respondent's Motion for Summary decision. Complainant has filed his Response and Respondent has filed a Reply. That motion is now ready for decision.

Contentions of the Parties

The Illinois Department of Human Rights filed a two (2) count *Complaint of Civil Rights Violation* with the Illinois Human Rights Commission on June 9th, 2003 alleging that Complainant had suffered discrimination based on his race, American Indian/Alaskan Native and his age, 43, when Respondent failed to promote him to the position of Director of Animal Control.

Complainant alleges that at the time he applied for the position of Director it was Respondent's policy to promote persons based on seniority calculated from date of hire. Complainant alleges that although he had the most seniority he was not promoted to the position of Director. Rather, Complainant alleges that a younger, white male with less seniority was appointed to that position.

Respondent claims that it is not its policy to appoint persons to senior positions based solely on seniority, but on consideration of which applicant is the most capable person to serve in the position. Respondent argues that Joliet Township took time in making its decision regarding the appointment of a new Director of Animal Control. Respondent contends that it conducted interviews, giving each candidate the opportunity to set forth, in writing, their experiences, and state what their talents and proposals for the job would be. Respondent states that it gave each in-house candidate, including Complainant, an opportunity to serve as Acting Director. Respondent claims that after this lengthy process, its Board of Trustees chose the candidate that had the ability to lead other employees, the candidate about whom no complaints were received, and the candidate who demonstrated the ability to handle responsibility and fairness in his treatment of others. Complainant argues that Respondent's explanation for promoting a younger, white male instead of him is simply pretext for discrimination based on his race and age because Respondent's policy has always been to promote people based on seniority.

Attached to its motion for summary decision, Respondent has includes two (2) affidavits and two (2) sets of minutes from the June 7th, 2001 and June 26th, 2001 meeting of the Joliet Town Board. One affidavit is of Marilyn J. Budde who is the present Joliet Township Clerk. The second affidavit is of Monica L. Shaw who serves as assistant to the Joliet Township Supervisor. Complainant has not attached counter-affidavits or any other documentation to his Response.

FINDINGS OF FACT

The following facts were derived from uncontested portions of the pleadings, affidavits and other documentation submitted by the parties. These findings are not the result of credibility determinations and all evidence has been viewed in the light most favorable to Complainant.

1. Complainant Charles Thomas (Complainant) is a Native American/Alaskan Native and at all times relevant to the *Complaint of Civil Rights Violation* (Complaint) over the age of 40 years.
2. At all times relevant to the Complaint, Complainant was employed by Respondent in the position of Animal Control Warden.
3. Andrew Ivanicky (Ivanicky) also served as an Animal Control Warden for Respondent, but had less seniority than Complainant.
4. In or about April 2001, Respondent had an opening for the position of Director of the Joliet Township Animal Control Center (Director).
5. In or about April 2001, Complainant applied for the position of Director.
6. Complainant served as Acting Director of the Animal Control Center for a period of approximately six (6) weeks.
7. Respondent determined at a township board meeting held on June 26th, 2001 that it wanted to give Ivanicky the opportunity to serve as Acting Director so that partiality was not given to one animal warden over the other.
8. Subsequent to Complainant serving as Acting Director, Ivanicky also served as Acting Director of the Animal Control Center.
9. In or about September 2001, Respondent promoted Ivanicky (non-Native American/Alaskan Native, age 32) to the Director position.
10. Respondent promoted Ivanicky to the Director position based on his ability to lead other employees, his ability to handle the responsibility of the job and his treatment of other employees.

11. Respondent did not have a policy of promoting employees solely based on their seniority.
12. Respondent did not consider Complainant's race or his age when it made the decision to not promote him to the Director position.

CONCLUSIONS OF LAW

1. Complainant was an "employee" of Respondent as that term is defined under the Illinois Human Rights Act. 775 ILCS 5 Sec. 2-101(A).
2. Respondent is an "employer" as that term is defined under the Illinois Human Rights Act. 775 ILCS 5 Sec. 2-101(B).
3. The Commission has jurisdiction over the parties and the subject matter of this action.
4. Complainant's failure to submit a counter-affidavit in opposition to Respondent's motion for summary decision means that the assertions in Respondent's affidavits stand as admitted.
5. Respondent, through its motion for summary decision and the affidavits and supporting documents attached thereto, has shown that there are no genuine issues of material fact for hearing and that it is entitled to judgment as a matter of law.

DISCUSSION

Under Section 8-106.1 of the Illinois Human Rights Act, either party to a complaint may move for summary decision and it shall be granted if "there is no genuine issue of material fact and the moving party is entitled to a recommended order as a matter of law." The standards used in evaluation of motions for summary decision are the same as those employed in the courts of Illinois when ruling on motions for summary judgment. This principle was affirmed by the Illinois Appellate Court in *Fitzpatrick v. Illinois Human Rights Comm'n*, 267 Ill.App.3d 386, 642 N.E.2d 486, 204 Ill. Dec. 785 (4th

Dist. 1994) and *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 883 (1st Dist. 1993).

In considering a motion for summary decision, as with a motion for summary judgment, reasonable inferences may be drawn from undisputed facts, but must be drawn in favor of the non-moving party where the facts are susceptible to two or more interpretations. *Purdy Company of Illinois v. Transportation Insurance Company, Inc.*, 209 Ill.App.3d 519, 568 N.E.2d 318, 154 Ill.Dec.318 (1st Dist. 1991). Such inferences cannot be unreasonable, speculative or conjectural. The facts presented by the party opposed to the motion do not have to be as conclusive as those presented at a public hearing, but they need only provide a factual basis for denying the motion. *Birck v. City of Quincy*, 241 Ill.App.3d 119, 608 N.E.2d 920, 181 Ill. Dec. 669 (4th Dist. 1993). If an analysis of the facts presented by the movant and the non-movant result in a conclusion that there are no issues of material fact remaining for proof at a public hearing, the movant is entitled to dismissal of the complaint with prejudice.

In this case, Complainant has provided no evidence, through counter-affidavits or otherwise, to defeat Respondent's contention, which is supported by affidavits, that it did not have an across-the-board policy to promote based simply on seniority and that it did not consider Complainant's race or age when it chose not to promote him to the position of Director. To win this case at a public hearing, Complainant would have to establish a prima facie showing of discrimination. If he did so, Respondent would have to articulate a legitimate, non-discriminatory reason for its actions. For Complainant to prevail, he would then have to prove that Respondent's articulated reason for not promoting him is pretextual. *Zaderaka v. Human Rights Commission*, 131 Ill. 2d 172, 545 N.E. 2d 684 (1989). Complainant's Response to the *Motion for Summary Decision* fails to provide any assertions, through counter-affidavits or otherwise, which creates a factual issue as

to whether Respondent's explanation for not promoting him to the position of Director is pretext for unlawful race and/or age discrimination.

To support its motion for summary decision, Respondent has provided the affidavit of Marilyn J. Budde, Joliet Township Clerk. In her capacity as Township Clerk, Ms. Budde provides in her affidavit that she conducted a study of promotions to senior positions¹ within the Township and in six (6) cases reports that a person with less seniority than another was appointed to a particular senior position. This directly supports Respondent's contention that seniority is not the only factor considered when hiring for higher- level positions within the township. In that same affidavit, Ms. Budde states that she attended both the public and closed session meetings of the Board of Trustees on June 7th, 2001 and June 26th, 2001. She states that at no time during either of these meetings, in which Complainant's candidacy for the position of Director was discussed, was his age or race mentioned, discussed or considered.

Ms. Budde's affidavit provides specific instances in which promotions to higher positions were not based on seniority, but apparently based on other factors. This is consistent with Respondent's explanation as to why it promoted Ivanicky to Director and not Complainant. In contrast, Complainant's response to Respondent's motion does not provide this tribunal with any specific factual assertions that create a genuine issue as to whether or not seniority was the sole basis for promotions within the township. Complainant has framed his response by making vague factual assertions with no supporting documents or counter-affidavits to back them up.

When facts contained in an affidavit are not contradicted by a counter-affidavit, those facts are deemed to be admitted and must be taken as true. *Purtill v. Hess*, 111 Ill.2d 229, 489 N.E.2d 867 (1986); *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E. 2d 1200 (1st Dist. 1993). In this instance, because of his failure to file a counter-

affidavit, Complainant leaves this tribunal no choice but to grant Respondent's motion for summary decision.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Therefore, it is recommended that Respondent's *Motion for Summary Decision* be granted and that the complaint and the underlying charge in this matter be dismissed with prejudice.

ENTERED: January 11th, 2005

HUMAN RIGHTS COMMISSION

**MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

¹ Per the uncontested facts in the pleadings, Director of Animal Control is also a *senior* position.